UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,750	05/25/2000	Bryce Allen Curtis	AUS9-2000-0214-US1	6565

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Duke W Yee Carstens Yee & Cahoon LLP
P O Box 802334
Dallas, TX 75380

EXAMINER
KENDALL, CHUCK O

ART UNIT	PAPER NUMBER
2122	6

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No.	Applicant(s)
	09/578,750	CURTIS ET AL.
	Examiner	Art Unit
	Chuck O Kendall	2122

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>15 September 2003</u>.
2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-39</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-39</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.
13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
    a)☐ The translation of the foreign language provisional application has been received.
14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4)☐ Interview Summary (PTO-413) Paper No(s). _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Summary

1. This Office Action is the response to the communication received on September 15, 2003. Reconsideration of the instant application is requested by Applicant. All such supporting documentation has been placed of record in the file. Claims 1-39 are pending.

   a. Previously claims 1-39 were rejected under 35 U.S.C. § 102 (e), and 103(a) by Smith et al. US 6,477,703 and Chamberlain et al. USPN 6,427,227 B1.

   b. In this action claims 1-39 still remain rejected under the same grounds as stated above and in previous office action.

   c. In arguing Applicant asserts as stated in page 11 of 17, in response dated 9/15/2003, that neither Smith nor Chamberlain teach or suggest " determining whether a version of the installer program is incorrect with respect to the update", " responsive to the version of the installer program being incorrect, updating the installer program files in the update" and " installing the update in the program with the updated installer program".

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-7, 10-16, 20-25, 28, 29, 33, 36, & 37 are rejected under 35 U.S.C.

103(a) as being unpatentable over Smith et al. USPN 6,477,703 B1 in view of

Chamberlain USPN 6,427,227 B1.

Regarding claim 1, Smith discloses a method for updating code, the method (Col. 6:35-8:21), system (Fig. 1), comprising: providing an update to a plurality of versions of a program, wherein the program is updated by an installer program and a plurality of versions of the installer program exist (Smith, FIG. 1, step 110, FIG.3, step 330); determining whether a version of the installer program is incorrect with respect to the update (FIG.3, step 355,360); responsive to the version of the installer program being incorrect, updating the installer program from files in the update (FIG.6, step 610-670 also see associated text in Col: 5:40-6:18); and installing the update in the program with the updated installer program (FIG.5, 540). Smith doesn't explicitly disclose updating an installer program. However,

Chamberlain does disclose updating the installer program (FIG.3, items 31,37), also for product see (18:10-55). Therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify Smith with Chamberlain to attain the instant claimed invention because, "no software program is perfect and the release of numerous software patches to fix specific problems, and the release of new versions to fix or upgrade major problems are the norm" (Smith, Col.1:20-23).

Regarding claim 2, the method as recited in claim 1, wherein a determination that the version of the installer is older than the update indicates that the version of the installer program is incorrect (Smith, 5:10-15).

Regarding claim 3, the method as recited in claim 1, wherein a determination that the version of the installer is more recent than the update indicates that the version of

the installer program is incorrect (Smith, 5:15-20 for recent see recommended superceded by installed patch, and 5:50-55, also see user and deselecting conflicting patches 5:48-51).

Regarding claim 4, the method as recited in claim 1, wherein the version of the installer program is determined from a single one of a plurality of files contained within the installer program [Smith, FIG.1, step 110].

Regarding claim 5, the method as recited in claim 1, Smith discloses all the claimed limitations as applied in claim 1 above. Smith doesn't explicitly disclose wherein the updating step comprises: extracting installer files from the installer program into a directory and overwriting selected files from the installer program with a corresponding updated file extracted from the update. However, Chamberlain does disclose this in a similar configuration (Chamberlain 10, 50-55, also see Chamberlain, fig. 7, 705,707, 709); and

Regarding claim 6, the method as recited in claim 5, wherein the packaging step comprises compressing the updated files and remaining installer files to produce an updated installer program (Chamberlain 1: 22-24).

Regarding claim 7, the method as recited in claim 1, wherein the installer program comprises an install toolkit (fig.2, 37 see installer for toolkit), and the update comprises an update to the install toolkit (fig.2, 213, see path package).

Regarding claim 10, which is the product version of the method claim 1, see rationale above as previously discussed.

Regarding claim 11, which is the product version of the method claim 2, see rationale above as previously discussed.

Regarding claim 12, which is the product version of the method claim 3, see rationale above as previously discussed.

Regarding claim 13, which is the product version of the method claim 4, see rationale above as previously discussed.

Regarding claim 14, which is the product version of the method claim 5, see rationale above as previously discussed.

Regarding claim 15, which is the product version of the method claim 6, see rationale above as previously discussed.

Regarding claim 16, which is the product version of the method claim 7, see rationale above as previously discussed.

Regarding claim 19, which is the system version of the method claim 1, see rationale above as previously discussed.

Regarding claim 20, which is the system version of the method claim 2, see rationale above as previously discussed.

Regarding claim 21, which is the system version of the method claim 3, see rationale above as previously discussed.

Regarding claim 22, which is the system version of the method claim 4, see rationale above as previously discussed.

Regarding claim 23, which is the system version of the method claim 5, see rationale above as previously discussed.

Regarding claim 24, which is the system version of the method claim 6, see rationale above as previously discussed.

Regarding claim 25, which is the system version of the method claim 7, see rationale above as previously discussed.

Regarding claim 28, see reasoning in claim 1.

Regarding claim 29, see reasoning in claim 5.

Regarding claim 33, which is the product version of the method claim 1, see rationale above as previously discussed.

Regarding claim 36, which is the system version of the method claim 1, see rationale above as previously discussed.

Regarding claim 37, which is the system version of the method claim 5, see rationale above as previously discussed.

4. Claims 8, 9, 17, 18, 26, 27, 30, 31, 34, 35, 38, & 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. USPN 6,477,703 B1 in view of

Chamberlain USPN 6,427,227 B1, as applied in claims 1, 10, 19, 28, 32 and 36, and
further in view of Forbes et al. USPN 6,381,742.

Regarding claim 8, Smith as modified by Chamberlain discloses all the claimed
limitations as applied in claim 1. Neither Smith nor Chamberlain explicitly disclose
update written in an object-oriented language. However, Forbes does disclose this
feature, wherein the installer program and the update are written in an object-oriented
programming language (9:25-27). Therefore it would have been obvious to one of
ordinary skill in the art at the time the invention was made to combine Smith as modified
with Forbes to implement the instant claimed invention because, using object oriented
languages in writing programs is a common practice (9:25) and makes programming
more up to date and compatible.

Regarding claim 9, Smith as modified by Chamberlain discloses all the claimed
limitations as applied in claim 1. Neither Smith nor Chamberlain explicitly disclose
wherein the installer program comprises a java install toolkit and the update comprises
an update to the java install toolkit. However, Forbes does disclose this feature in a
similar configuration (Forbes, 13:57-60 for update to the java install see manifest).
Therefore it would have been obvious to one of ordinary skill in the art at the time the
invention was made to combine Smith as modified with Forbes to implement the instant
claimed invention using java because, Java is a generally used language in the art and
it would have enable a java installer to be updated.

Regarding claim 17, which is the product version of the method claim 8, see
rationale above as previously discussed.

Regarding claim 18, which is the product version of the method claim 9, see
rationale above as previously discussed.

Regarding claim 26, which is the system version of the method claim 8, see
rationale above as previously discussed.

Regarding claim 27, which is the system version of the method claim 9, see
rationale above as previously discussed.

Regarding claim 30, see reasoning in claim 8.

Regarding claim 31, see reasoning in claim 9.

Regarding claim 34, which is the product version of the method claim 8, see rationale above as previously discussed.

Regarding claim 35, which is the product version of the method claim 9, see rationale above as previously discussed..

Regarding claim 38, which is the system version of the method claim 8, see rationale above as previously discussed.

Regarding claim 39, which is the system version of the method claim 9, see rationale above as previously discussed.

Response to Arguments

5. Applicant's arguments filed 09/15/2003 have been fully considered but they are not persuasive to overcome the previous rejection.

In argument (1), Applicant argues that prior art doesn't teach, "determining whether a version of the installer program is incorrect with respect to the update". Examiner believes that prior art does disclose this feature.

Response (1), As set forth above in claim 1 in Fig. 3 step 360, prior art (Smith) shows confirming (determining) if version matches installed products before upgrading.

Regarding argument (2), Applicant asserts that prior art doesn't teach being "responsive to the version of the installer program being incorrect, updating the installer program files in the update". Examiner believes as set forth in claim 1 above and as taught by Smith in Fig.6, steps 610-670 (also see associated text in Col. 5: 40-6:18) that prior art does disclose this feature. As recited, prior art discloses if conflict (incorrect) exist between patches displaying conflicts, displaying a final master patch list and updating patch request queue accordingly. Although, primary reference Smith doesn't

not expressly disclose an installer program, Chamberlain the secondary art does
disclose this feature. See Fig. 2, item # 37 and 202.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of
time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within
TWO MONTHS of the mailing date of this final action and the advisory action is not
mailed until after the end of the THREE-MONTH shortened statutory period, then the
shortened statutory period will expire on the date the advisory action is mailed, and any
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
the advisory action. In no event, however, will the statutory period for reply expire later
than SIX MONTHS from the mailing date of this final action.

Correspondence Information

7. Any inquires concerning this communication or earlier
communications from the examiner should be directed to Chuck O.
Kendall who may be reached via telephone at (703) 308-6608. The
examiner can normally be reached Monday through Friday between 8:00
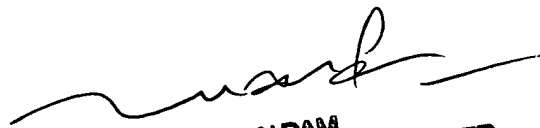A.M. and 5:00 P.M. est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached at (703) 305-4552.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

For facsimile (fax) send to 703-7467239 official and 703-7467240 draft

Chuck O. Kendall

Software Engineer Patent Examiner

TUAN DAM
SUPERVISORY PATENT EXAMINER